

1 HONORABLE MICHELLE L. PETERSON
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56 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT SEATTLE9 BUNGIE, INC., a Delaware corporation,
10 Plaintiff,

11 v.

12 JOSHUA FISHER, JACOB W. MAHURON
13 A/K/A "PRAGMATICITAX," MATTHEW
14 ABBOTT A/K/A "NOVA," JOSE
15 DEJESUS AKA "DAVID HASTINGS"
16 A/K/A "J3STER," TRAVERS RUTTEN
17 A/K/A "TRAVERS7134," JESSE
18 WATSON A/K/A "JESSEWATSON3944,"
19 JOHN DOE NO. 1 A/K/A "CALC",
20 ANDREW THORPE A/K/A "CYPHER,"
21 RYAN POWER AKA "KHALEESI," JOHN
22 DOE NO. 4 A/K/A "GOD," JOHN DOE
23 NO. 5 A/K/A "C52YOU," JOHN DOE NO.
24 6 A/K/A "LELABOWERS74," JOHN DOE
25 NO. 7 A/K/A "FRAMEWORK," KICHING
26 KANG A/K/A "SEQUEL," JOHN DOE
27 NO. 9 A/K/A "1NVITUS," DAVID
BRINLEE A/K/A "SINISTER," JOHN DOE
NO. 11 A/K/A "THEGUY," JOHN DOE
NO. 12 A/K/A "BEATRED," JOHN DOE
NO. 13 A/K/A "COMMUNITYMODS,"
JOHN DOE NO. 14 A/K/A "PALACE,"
JOHN DOE NO. 15 A/K/A
"VINCENTPRICE," JOHN DOE NO. 16
A/K/A "ESSWAN," JOHN DOE NO.
17 A/K/A "ADMIRAL," JOHN DOE NO. 18
A/K/A "TOMDICKHARRY," JOHN DOE
NO. 19 A/K/A "ROB," JOHN DOE NO. 20
A/K/A "STAYLOCKED," JOHN DOE NO.

Case No. 2:23-cv-01143-MLP

PLAINTIFF BUNGIE, INC.'S *EX PARTE*
SIXTH MOTION FOR AN EXTENSION OF
THE SERVICE DEADLINE UNDER
RULE 4(m)NOTE ON MOTION CALENDAR:
February 10, 2025

1 21 A/K/A "FIVE-STAR," JOHN DOE NO.
 2 22 A/K/A "HORROR," JOHN DOE NO. 23
 3 A/K/A ELITECHEATZ.CO, JOHN DOE
 4 NO. 24 A/K/A MIHAI LUCIAN, JOHN
 5 DOE NO. 25 A/K/A NATHAN BERNARD,
 6 A/K/A "DOVE," JOHN DOE NO. 26
 7 A/K/A "BLACKMAMBA," JOHN DOE
 8 NO. 27 A/K/A "BILLNYE," JOHN DOE
 9 NO. 28 A/K/A "BANEK192," JOHN DOE
 10 NO. 29 A/K/A SHOPPY ECOMMERCE
 11 LTD, JOHN DOE NO. 30 A/K/A/ FINN
 12 GRIMPE A/K/A "FINNDEV," AND JOHN
 13 DOES NO. 31-50,

14 Defendants.

15 Plaintiff Bungie, Inc. hereby moves for an additional 90-day extension to the Rule 4(m)
 16 deadline to permit Bungie to complete the process of identifying, locating, and then serving any
 17 remaining U.S. Defendants.

18 **I. INTRODUCTION**

19 Bungie is the owner and developer of the massive multiplayer online video game shooter
 20 *Destiny 2*. Defendants develop, sell, market, and support cheat software targeted to attack
 21 *Destiny 2*. *See generally* Dkt. 54. Recognizing that Defendants have deliberately obscured their
 22 identities, the Court granted Bungie's requests for third party discovery on November 29, 2023,
 23 April 24, 2024, and September 16, 2024. *See* Dkts. 27, 51, 68. Bungie has served every subpoena
 24 permitted under those Orders. Additionally, Bungie amended its complaint to encompass what it
 25 had discovered. *See* Dkts. 53, 54.

26 Via third-party discovery, Bungie has aggressively pursued efforts to complete the
 27 process of identifying, locating, and serving the Defendants. Its most recent efforts have born
 tremendous fruit, but, due to the holidays, delays in getting all of the remaining productions, an
 inadvertent delay from a process server, and needing to send follow-up subpoenas as permitted
 by the September 16th Order, not all productions have been returned. *See generally* Declaration
 of Dylan Schmeyer ¶¶ 4-7.

Bungie, having not received Rule 4 waiver acceptances back from the Defendants it has

1 identified, has served all identified U.S. Defendants. It also has begun the process of serving
 2 Defendants located outside the United States, either through Hague service or alternative service.
 3 Bungie is finalizing its list of Defendants for whom Hague and alternative service will be
 4 necessary, and as soon as it can make its final identifications, that motion can be completed and
 5 filed. *Id.* at ¶ 12.

6 Bungie has only obtained half of the productions for its final round of
 7 subpoenas – various incidents have conspired to delay their receipt. *Id.* at ¶¶ 5, 6, 12-13. Bungie
 8 needs these productions, and a brief period to analyze them, in order to (1) potentially identify
 9 any remaining U.S. Defendants who remain anonymous and (2) ensure that its forthcoming
 10 alternative service request only encompasses Defendants it cannot serve by traditional means.

11 Bungie is cognizant of the long and sometimes winding road its investigation has taken,
 12 but it has made tremendous progress, particularly given the efforts Defendants have undertaken
 13 to mask their identities and locations. Bungie is seeking an extension of 90 days from the
 14 issuance of the Court’s Order on this Motion so that the work it began in November 2023 (and
 15 before) can be completed.

16 **II. FACTUAL BACKGROUND**

17 On October 27, 2023, Bungie filed a motion seeking third-party discovery to unmask
 18 anonymous defendants for service of process. Dkt. 24. The Court granted that motion in part on
 19 November 29, 2023. Dkt. 27. Eighteen subpoenas were served under that Order. Dkt. 29 at ¶ 10.
 20 On April 9, 2024, Bungie filed a second motion seeking further third-party discovery, which the
 21 Court granted on April 24th. *See* Dkts. 40, 51. Six subpoenas were served under that Order.
 22 Schmeyer Declaration ¶¶ 4, 7. Bungie filed a third motion seeking a final round of third-party
 23 discovery on August 23rd, which was granted on September 16th. Dkts. 58, 68. Six subpoenas
 24 were eventually served under that Order, although due to an inadvertent error by the process
 25 server, three subpoenas were served much later than anticipated, and a follow-up subpoena had
 26 to be served per the production from Payward. Schmeyer Declaration ¶¶ 5-7. Bungie’s analysis
 27 of the Payward subpoena production, and thus Bungie’s ability to identify its follow-up needs,

1 was substantially delayed by the now withdrawn motion to quash (*see* Dkts. 77, 95), which
 2 caused Payward to withhold the production until resolution. Schmeyer Declaration ¶ 6. Bungie
 3 will need additional time to obtain and analyze these extant productions to complete its efforts to
 4 identify and locate the remaining Defendants. *Id.* at ¶¶ 12-13.

5 Bungie sent Rule 4 waiver requests to all named Defendants it has identified and pinned
 6 to a domicile, and one it has identified with reliable communication methods, with its Amended
 7 Complaint. *Id.* at ¶ 8. Bungie received only two favorable responses. *Id.* Therefore, Bungie has
 8 moved forward with serving all U.S. Defendants whom it has identified and who have not agreed
 9 to waive service. *Id.* at ¶ 9. One of those Defendants has since defaulted. Dkt. 98. Another has
 10 been dismissed. Dkt. 100.

11 Bungie wishes to formally serve everyone it can, thereby focusing its forthcoming
 12 alternative service request only on Defendants that Bungie's investigation and third-party
 13 discovery cannot identify and locate. As such, Bungie needs the final third-party productions to
 14 finalize its list of Defendants who cannot be served by traditional means and to confirm whether
 15 there are any more U.S. Defendants unknown to it. Bungie has made steady progress with
 16 identification and service to this juncture. Schmeyer Declaration ¶¶ 8-11. But Bungie requires
 17 more time to secure, analyze, and finalize its investigation so that it may finalize its alternative
 18 service needs and amend the complaint with any newly identified Doe defendants. *Id.* at ¶ 13.

19 Bungie therefore submits that there is good cause to extend the Rule 4(m) deadline,
 20 currently set at February 16th, by a further 90 days to allow the final third-party discovery
 21 Bungie is awaiting to reach its conclusion, and thereby allow Bungie to finalize its forthcoming
 22 alternative service requests. All known U.S. Defendants have been served by the time of this
 23 filing – this extension to the Rule 4(m) deadline is thus only for those unidentified Defendants
 24 who may yet turn out yet to be located in the U.S.

25 **III. LEGAL ARGUMENT**

26 Under Rule 4(m), a court “must extend the time for service for an appropriate period”
 27 where the plaintiff shows good cause for an inability to serve a defendant within 90 days of filing

1 the complaint. FED. R. CIV. P. 4(m). *See also Efaw v. Williams*, 473 F.3d 1038, 1040 (9th Cir.
 2 2007) (“Rule 4(m) . . . requires a district court to grant an extension of time when the plaintiff
 3 shows good cause for the delay.”) (emphasis omitted). A showing of good cause may involve
 4 various factors, such as the lack of prejudice to defendant and the significant prejudice to
 5 plaintiff if the extension were not granted and the complaint was dismissed, and the defendant’s
 6 receipt of actual notice of the lawsuit. *See, e.g., Efaw*, 473 F.3d at 1041; *Madrid v. Adkins*,
 7 No. C19-1710 JLR-TLF, 2020 U.S. Dist. LEXIS 173154, *6, 8 (W.D. Wash. Aug. 20, 2020),
 8 *report & recommendation adopted by* 2020 U.S. Dist. LEXIS 186681 (W.D. Wash. Oct. 6,
 9 2020); *Hoefer v. Apple Wash. LLC*, No. C17-1369 RAJ, 2018 U.S. Dist. LEXIS 216863, *5-6
 10 (W.D. Wash. Dec. 27, 2018). Upon a showing of good cause for the lack of service, the district
 11 court must extend the time period for service. *In re Sheehan*, 253 F.3d 507, 512 (9th Cir. 2001).
 12 Even absent a showing of good cause, the court still has discretion to extend the time period. *Id.*
 13 (*citing Petruccelli v. Boehringer & Ratzinger, GMBH*, 46 F.3d 1298, 1305 (3d Cir.1995)).

14 The Ninth Circuit has also concluded that Rule 4’s timing requirement for service is
 15 “inapplicable to service in a foreign country[.]” *Lucas v. Natoli*, 936 F.2d 432 (9th Cir. 1991)
 16 (per curiam). Thus, where it appears defendants may need to be served in foreign countries, the
 17 time limit for service in Rule 4(m) does not apply. *Amazon.com Inc. v. Awns*, No. C22-402-MLP,
 18 2022 U.S. Dist. LEXIS 185807, *2 (W.D. Wash. Oct. 11, 2022). However, “[d]espite the lack of
 19 an express time limit, Rule 4(m) does not preclude the court from setting a reasonable time limit
 20 for service in a foreign country to properly manage a civil case.” *Id.* (internal quotation marks
 21 omitted).

22 Bungie requires the last productions to determine which of the remaining unidentified
 23 Defendants are U.S. residents and which are domiciled abroad. Dkt. 56 at ¶ 4. Bungie formally
 24 served all of the U.S. Defendants it has been able to locate and has had one Rule 4 waiver
 25 returned. Dkt. 99; Schmeyer Declaration ¶ 8. To the extent that any of the remaining unidentified
 26 Defendants are residents of a foreign country, Bungie will pursue serving them, once they are
 27 identified, in the same manner as it is pursuing foreign Defendants it has already identified and

1 located. *Id.*

2 Bungie has good cause for having not yet served any remaining U.S. Defendants:
 3 Namely, that Bungie doesn't know who they are yet, whether they are in fact in the United States
 4 or a foreign country, the address of their primary residence, or other information sufficient to
 5 affect service. Although Bungie has issued three waves of subpoenas to third parties to identify,
 6 locate and affect service on the unidentified Defendants, some remain unidentified.¹ Bungie is
 7 working on following its final leads via the productions from the final subpoenas, which
 8 necessarily entails working with third parties and the delays inherent in that process. More time
 9 is therefore needed to identify and serve these unidentified Defendants, whether they are foreign
 10 or domestic.

11 There is no undue prejudice to the unidentified Defendants if such an extension were
 12 granted. The extension is necessary to allow time for Bungie to (1) either identify Defendants so
 13 they may be served or exhaust its efforts to do so, and (2) move for alternative service of the
 14 identified Defendants that Bungie is ultimately unable to obtain a physical address for. Bungie,
 15 on the other hand, would be significantly prejudiced, as the unidentified Defendants could
 16 continue their tortious conduct (and potentially add new or additional layers of anonymity to
 17 avoid identification) while Bungie continued to identify them, functionally rewarding them for
 18 obfuscating their identities. This delay would not negatively impact the orderly progress of the
 19 case. The request is solely to allow Bungie time to complete its efforts to identify and locate the
 20 remaining unidentified Defendants, or so it can determine which Defendants it will need to seek
 21 alternative service for. Further, the reason for the delay is largely, if not entirely, out of Bungie's
 22 control. Any delay is due in significant part to the Defendants' ongoing attempts to conceal their
 23 identities. *See, e.g.*, Dkt. 25 at ¶¶ 2-13. The potential but heretofore unknown foreign residence
 24 of many unidentified Defendants has further complicated and delayed efforts to identify, locate,
 25

26 ¹ Since filing its Amended Complaint, Bungie has been successful in identifying and locating
 27 some of the Doe Defendants and has requested issuance of summons to serve those Defendants.
See Dkts. 61-64, 71-72.

1 and serve them. Finally, Bungie has acted diligently and in good faith in promptly pursuing
 2 multiple avenues of discovery and investigation – including via 31 subpoenas – to identify,
 3 name, and serve Defendants. *See, e.g., Vanleeuwen v. Keyuan Petrochemicals, Inc.*, No. CV 11-
 4 9495 PSG (JCGx), 2013 U.S. Dist. LEXIS 121976, *13-14 (C.D. Cal. Aug. 26, 2013) (difficulty
 5 in locating defendant and plaintiffs’ attempts to locate defendant through discovery supported the
 6 conclusion that plaintiffs acted in good faith). Bungie’s filing of requests for summons, a request
 7 for entry of default, proofs of service and Rule 4 waivers, and voluntary dismissals is indicative
 8 of its continuing progress in its investigation and this case. Bungie is making good use of all the
 9 time the Court grants it.

10 If the Court concludes that this is not good cause requiring an extension under the
 11 mandatory language of Rule 4(m), it should still exercise its discretion and grant the extension in
 12 the interest of judicial efficiency. Bungie has invested considerable time and resources into
 13 determining the obfuscated identities of the Defendants, to considerable success – Bungie has
 14 identified a significant number. *See* Schmeyer Declaration ¶ 8. Bungie has actively pursued the
 15 permitted third-party discovery and is merely awaiting the remaining productions from the final
 16 subpoenas to make final decisions as to service. These productions will allow it to either identify
 17 and locate the unidentified Defendants for traditional service or to crystalize its alternative
 18 service needs. Absent a grant of more time, it is conceivable that additional U.S. Defendants
 19 could be dismissed from this suit, without prejudice, for lack of service. Bungie’s efforts to
 20 identify them would not cease, however, and once they were identified, Bungie would sue them
 21 again once their names and addresses were discovered. Allowing more time for Bungie to
 22 complete the limited third-party discovery it has sought now, so this can be accomplished on a
 23 reasonable timeline without these additional steps, is the most efficient path.

24 **IV. CONCLUSION**

25 Bungie therefore respectfully requests that the Court extend Bungie’s deadline to serve
 26 the remaining U.S. Defendants by 90 days from the date of the order on this Motion.

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1 Dated this 10th day of February, 2025.

2 KAMERMAN, UNCYK, SONIKER &
3 KLEIN, P.C.

4 By: s/ Dylan Schmeyer

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Respectfully submitted,

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10 **WORD LIMIT CERTIFICATION**

11 I certify that this memorandum contains 2,082 words, in compliance with the Local Civil
12 Rules.

13 By: s/ Stacia N. Lay

14 Stacia N. Lay, WSBA #30594